IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

WP(C).No. 32240 of 2006(K)

AGAINST THE ORDER IN EA 209/06 IN EP 666/04. IN ARC.618/2002 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

ABDUL AZEEZ, AGED 38 YEARS,
S/O. MATHILAKATH VEETTIL AHAMMED,
RAYAM MARAKKAR VEETTIL, THIRUNELLUR DESOM,
MULLASSERI AMSOM, CHAVAKKAD TALUK.

BY ADV. SRI.P.SANTHOSH (PODUVAL)

RESPONDENTS:

RURAL HOUSING CO-OPERATIVE SOCIETY,
P.O.PAVARATTY, CHAVAKKAD TALUK,
REP. BY ITS SECRETARY.

BY ADV. SRI.N.J.JOHNSON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the order in E.A.No.209/06 under Order 21 Rule 106 read with Sec.151 C.P.C. Dtd. 25.5.2006 of the II Additional Sub Court, Thrissur.

Ext.P2:- True copy of the counter filed by the respondent dtd. 25.2.2006.

Ext.P3:- True copy of the application in E.A.No.209/06 in E.P.No.666/2004 in ARC 618/2002 dtd. 31.1.2006.

/true copy/

P.S. To Judge

M.Sasidharan Nambiar,J.

W.P.(C) No. 32240 of 2006

Dated, this the 19th day of December, 2006

JUDGMENT

Petitioner is the judgment debtor. Respondent is the decree holder. In execution of the award passed by the Assistant Registrar of Co-operative Societies, E.P. 666/04 was filed before Sub court, Thrissur. The property of the petitioner was sold in execution. Before confirmation of sale petitioner filed E.A.209/06 to set aside the ex parte order in the E.P. Under Ext.P1 order the petition was dismissed. Subsequently the sale was confirmed. This petition is filed under Article 227 of the Constitution of India challenging Ext.P1 order.

2. Learned counsel appearing for petitioner and respondent were heard.

3. Learned counsel appearing for the petitioner submitted that petitioner is in Gulf countries and therefore he could not appear before the executing court and in such circumstance, the ex parte order should have been set aside. Learned counsel appearing for petitioner also submits that respondent is the auction purchaser and petitioner is prepared to pay the amount due to the respondent.

4. Learned counsel appearing for the respondent submits that respondent is prepared to agree for a one time settlement. This Writ petition is disposed with the following directions. Petitioner is permitted to file a representation before the respondent society seeking permission for one time settlement of the claim. If such a representation is filed within 15 days from this day, respondent has to consider the same and pass appropriate orders within thirty days. Executing court is directed to postpone the execution proceedings for two months.

M.Sasidharan Nambiar
Judge

Tpl/-